

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3462 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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BABULAL @ BHAYO SOMABHAI MARWADI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City,
Ahmedabad, passed an order on March 30, 1999, in exercise
of powers under Section 3(1) of the Gujarat Prevention
Anti-Social Activities Act, 1985 ("PASA Act" for short)

detaining the petitioner under the provisions of the PASA Act.

#. The grounds of detention reveal that the detaining authority took into consideration four prohibition offences registered against the detenu. The authority also took into consideration statements of two anonymous witnesses recorded by the sponsoring authority. The authority, after considering the statements of witnesses and verifying the correctness and genuineness of the statements recorded and fear expressed by the witnesses therein, deemed it proper to exercise powers under Section 9(2) of the PASA Act and claim privilege of not disclosing identity of these witnesses. After considering less drastic alternative remedies, the detaining authority arrived at a subjective satisfaction that order for detention under is required to be passed in respect of the detenu in order to immediately prevent him from pursuing his illegal activities.

#. The detenu/petitioner challenges the order of detention on various counts. Ms. Subhadra Patel, learned advocate for the petitioner, has restricted her argument only to the ground stated in paragraph 9-B of the petition. She submitted that the statements of anonymous witnesses were recorded on the 27th and 28th March, 1999. The same were verified on the 30th March, 1999 and on the very same day the order came to be passed. The authority, therefore, had no time to undertake the exercise of arriving at a subjective satisfaction about the correctness and genuineness of the statements made and fear expressed by the witnesses and the need for exercise of powers under Section 9(2) of the PASA Act in public interest. She submitted that in light of decision in the case of Kalidas C. Kahar v. State of Gujarat, 1993(2) GLR, 1659, there was no time for the authority to arrive at such a genuine conclusion and, therefore, the order would stand vitiated and the petition may, therefore, be allowed.

#. Mr. M.A. Bukhari, learned Assistant Government Pleader, has opposed this petition.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

5.1 The statements were verified on the 30th March, 1999 and the order of detention came to be passed on the

very same day. There was, therefore, no time lag between these two events which could have made possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order of detention bad in law. The subjective satisfaction required to be recorded by the detaining is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on the 30th March, 1999 and the order is passed on the very same day, there was no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. In this regard decision in case of Kalidas Chandubhai Kahar v. State of Gujarat [1993(2) GLR, 1659] relied upon by the learned advocate for the petitioner is squarely applicable and the petition deserves to be allowed on this ground alone.

#. The affidavit in reply also does not disclose as to what exercise undertaken by the detaining authority for arriving at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. It is true that the subjective satisfaction cannot be judged by a Court and whether the material before the detaining authority was sufficient or not cannot be gone into by the Court. But whether there was cogent material to arrive at the subjective satisfaction has to be examined and in absence of any such material, the subjective satisfaction cannot be said to have been genuinely arrived at. This would render the impugned order bad in law.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the petitioner-Babulal alias Bhayo Somabhai Marwadi dated the 30th March, 1999 is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty

forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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